

REFERENCE TITLE: DNA testing; arrest

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1332

Introduced by
Senator Gray C

AN ACT

AMENDING SECTIONS 13-610 AND 13-3967, ARIZONA REVISED STATUTES; RELATING TO
DEOXYRIBONUCLEIC ACID TESTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-610, Arizona Revised Statutes, is amended to
3 read:

4 13-610. DNA testing

5 A. Within thirty days after a person is sentenced to the state
6 department of corrections or a person who is accepted under the interstate
7 compact for the supervision of parolees and probationers arrives in this
8 state, the state department of corrections shall secure a sufficient sample
9 of blood or other bodily substances for deoxyribonucleic acid testing and
10 extraction from the person if the person was convicted of an offense listed
11 in this section and was sentenced to a term of imprisonment or was convicted
12 of any offense that was committed in another jurisdiction that if committed
13 in this state would be a violation of any offense listed in this section and
14 the person is under the supervision of the state department of corrections.
15 The state department of corrections shall transmit the sample to the
16 department of public safety.

17 B. Within thirty days after a person is placed on probation and
18 sentenced to a term of incarceration in a county jail detention facility or
19 is detained in a county juvenile detention facility, the county detention
20 facility shall secure a sufficient sample of blood or other bodily substances
21 for deoxyribonucleic acid testing and extraction from the person if the
22 person was convicted of or adjudicated delinquent for an offense listed in
23 this section. The county detention facility shall transmit the sample to the
24 department of public safety.

25 C. Within thirty days after a person is convicted and placed on
26 probation without a term of incarceration or adjudicated delinquent and
27 placed on probation, the county probation department shall secure a
28 sufficient sample of blood or other bodily substances for deoxyribonucleic
29 acid testing and extraction from the person if the person was convicted of or
30 adjudicated delinquent for an offense listed in this section. The county
31 probation department shall transmit the sample to the department of public
32 safety.

33 D. Within thirty days after the arrival of a person who is accepted
34 under the interstate compact for the supervision of parolees and probationers
35 and who is under the supervision of a county probation department, the county
36 probation department shall secure a sufficient sample of blood or other
37 bodily substances for deoxyribonucleic acid testing and extraction from the
38 person if the person was convicted of an offense that was committed in
39 another jurisdiction that if committed in this state would be a violation of
40 any offense listed in this section and was sentenced to a term of probation.
41 The county probation department shall transmit the sample to the department
42 of public safety.

43 E. Within thirty days after a juvenile is committed to the department
44 of juvenile corrections, the department of juvenile corrections shall secure
45 a sufficient sample of blood or other bodily substances for deoxyribonucleic

1 acid testing and extraction from the youth if the youth was adjudicated
2 delinquent for an offense listed in this section and was committed to a
3 secure care facility. The department of juvenile corrections shall transmit
4 the sample to the department of public safety.

5 F. Within thirty days after the arrival in this state of a juvenile
6 who is accepted by the department of juvenile corrections pursuant to the
7 interstate compact on juveniles and who was adjudicated for an offense that
8 was committed in another jurisdiction that if committed in this state would
9 be a violation of any offense listed in this section, the compact
10 administrator shall request that the sending state impose as a condition of
11 supervision that the juvenile submit a sufficient sample of blood or other
12 bodily substances for deoxyribonucleic acid testing. If the sending state
13 does not impose that condition, the department of juvenile corrections shall
14 request a sufficient sample of blood or other bodily substances for
15 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
16 in this state. The department of juvenile corrections shall transmit the
17 sample to the department of public safety.

18 G. Notwithstanding subsections A through F, ~~K, L AND O~~ of this
19 section, the agency that is responsible for securing a sample pursuant to
20 this section shall not secure the sample if the scientific criminal analysis
21 section of the department of public safety has previously received and
22 ~~maintains~~ IS MAINTAINING a sample sufficient for deoxyribonucleic acid
23 testing.

24 H. The department of public safety shall do all of the following:

25 1. Conduct or oversee through mutual agreement an analysis of the
26 samples that it receives pursuant to subsections K, L and O of this section.

27 2. Make and maintain a report of the results of each deoxyribonucleic
28 acid analysis.

29 3. Maintain samples of blood and other bodily substances for at least
30 thirty-five years.

31 I. Any sample and the result of any test that is obtained pursuant to
32 this section may be used only as follows:

33 1. For law enforcement identification purposes.

34 2. In a proceeding in a criminal prosecution or juvenile adjudication.

35 3. In a proceeding under title 36, chapter 37.

36 J. If the conviction of a person who is subject to this section is
37 overturned on appeal or postconviction relief and a final mandate has been
38 issued, on petition of the person to the superior court in the county in
39 which the conviction occurred, the court shall order that the person's
40 deoxyribonucleic acid profile resulting from that conviction be expunged from
41 the Arizona deoxyribonucleic acid identification system established by
42 section 41-2418 unless the person has been convicted of another offense that
43 would require the person to submit to deoxyribonucleic acid testing pursuant
44 to this section.

1 K. If a person is arrested for any offense listed in subsection O,
2 paragraph 3 of this section and is transferred by the arresting authority to
3 a state, county or local law enforcement agency or jail, the arresting
4 authority or its designee shall secure a sufficient sample of buccal cells or
5 other bodily substances for deoxyribonucleic acid testing and extraction from
6 the person for the purpose of determining identification characteristics.
7 The arresting authority or its designee shall transmit the sample to the
8 department of public safety.

9 L. ~~If a judicial officer as defined in section 13-3967 releases a~~
10 ~~person on the person's own recognizance or on bail, the judicial officer A~~
11 ~~PERSON WHO IS CHARGED WITH A FELONY OR MISDEMEANOR OFFENSE LISTED IN~~
12 ~~SUBSECTION O, PARAGRAPH 3 OF THIS SECTION AND WHO IS SUMMONED TO APPEAR IN~~
13 ~~COURT FOR AN INITIAL APPEARANCE shall order the person to report,~~ within
14 five days, ~~if the person is charged with a felony or misdemeanor offense~~
15 ~~listed in subsection O, paragraph 3 of this section OF RELEASE ON BAIL OR ON~~
16 ~~THE PERSON'S OWN RECOGNIZANCE~~ to the law enforcement agency that arrested the
17 person or its designee and submit a sufficient sample of buccal cells or
18 other bodily substances for deoxyribonucleic acid testing and extraction.
19 The arresting authority or its designee shall transmit the sample to the
20 department of public safety. If a person does not comply with an order made
21 pursuant to this subsection, the court shall revoke the person's release.

22 M. A person who is subject to subsection K or L of this section may
23 petition the superior court in the county in which the arrest occurred or the
24 criminal charge was filed to order that the person's deoxyribonucleic acid
25 profile and sample be expunged from the Arizona deoxyribonucleic acid
26 identification system, unless the person has been arrested or charged with or
27 convicted of another offense that would require the person to submit to
28 deoxyribonucleic acid testing pursuant to this section, if any of the
29 following applies:

- 30 1. The criminal charges are not filed within the applicable period
31 prescribed by section 13-107.
32 2. The criminal charges are dismissed.
33 3. The person is acquitted at trial.

34 N. If any sample that is submitted to the department of public safety
35 under this section is found to be unacceptable for analysis and use or cannot
36 be used by the department, the department shall require that another sample
37 of blood or other bodily substances be secured pursuant to this section.

38 O. This section applies to persons who are:

39 1. Convicted of any felony offense.

40 2. Adjudicated delinquent for any of the following offenses:

41 (a) A violation or an attempt to violate any offense in chapter 11 of
42 this title, any felony offense in chapter 14 or 35.1 of this title or section
43 13-1507, 13-1508 or 13-3608.

44 (b) Any offense for which a person is required to register pursuant to
45 section 13-3821.

1 (c) A violation of any felony offense in chapter 34 of this title that
2 may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

3 (d) A violation of any felony offense that is listed in section
4 13-501.

5 3. ~~Beginning January 1, 2008,~~ Arrested for a violation of any offense
6 in chapter 11 of this title, a violation of section 13-1402, 13-1403,
7 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508,
8 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense
9 pursuant to section 13-604 involving the discharge, use or threatening
10 exhibition of a deadly weapon or dangerous instrument or the intentional or
11 knowing infliction of serious physical injury.

12 Sec. 2. Section 13-3967, Arizona Revised Statutes, is amended to read:
13 13-3967. Release on bailable offenses before trial; definition

14 A. At his appearance before a judicial officer, any person who is
15 charged with a public offense that is bailable as a matter of right shall be
16 ordered released pending trial on his own recognizance or on the execution of
17 bail in an amount specified by the judicial officer.

18 B. In determining the method of release or the amount of bail, the
19 judicial officer, on the basis of available information, shall take into
20 account all of the following:

- 21 1. The views of the victim.
- 22 2. The nature and circumstances of the offense charged.
- 23 3. The weight of evidence against the accused.
- 24 4. The accused's family ties, employment, financial resources,
25 character and mental condition.
- 26 5. The results of any drug test submitted to the court.
- 27 6. Whether the accused is using any substance if its possession or use
28 is illegal pursuant to chapter 34 of this title.
- 29 7. Whether the accused violated section 13-3407, subsection A,
30 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
- 31 8. The length of residence in the community.
- 32 9. The accused's record of arrests and convictions.
- 33 10. The accused's record of appearance at court proceedings or of
34 flight to avoid prosecution or failure to appear at court proceedings.
- 35 11. Whether the accused has entered or remained in the United States
36 illegally.

37 12. Whether the accused's residence is in this state, in another state
38 or outside the United States.

39 C. If a judicial officer orders the release of a defendant who is
40 charged with a felony either on his own recognizance or on bail, the judicial
41 officer shall condition the defendant's release on the defendant's good
42 behavior while so released. On a showing of probable cause that the
43 defendant committed any offense during the period of release, a judicial
44 officer may revoke the defendant's release pursuant to section 13-3968.

1 D. After providing notice to the victim pursuant to section 13-4406, a
2 judicial officer may impose any of the following conditions on a person who
3 is released on his own recognizance or on bail:

4 1. Place the person in the custody of a designated person or
5 organization agreeing to supervise him.

6 2. Place restrictions on the person's travel, associates or place of
7 abode during the period of release.

8 3. Require the deposit with the clerk of the court of cash or other
9 security, such deposit to be returned on the performance of the conditions of
10 release.

11 4. Prohibit the person from possessing any dangerous weapon or
12 engaging in certain described activities or indulging in intoxicating liquors
13 or certain drugs.

14 5. Require the person to report regularly to and remain under the
15 supervision of an officer of the court.

16 6. Impose any other conditions deemed reasonably necessary to assure
17 appearance as required including a condition requiring that the person return
18 to custody after specified hours.

19 E. In addition to any of the conditions a judicial officer may impose
20 pursuant to subsection D of this section, the judicial officer shall impose
21 both of the following conditions on a person who is charged with a felony
22 violation of chapter 14 or 35.1 of this title and who is released on his own
23 recognizance or on bail:

24 1. Electronic monitoring where available.

25 2. A condition prohibiting the person from having any contact with the
26 victim.

27 F. The judicial officer who authorizes the release of the person
28 charged on his own recognizance or on bail shall do all of the following:

29 1. Issue an appropriate order containing statements of the conditions
30 imposed.

31 2. Inform the person of the penalties that apply to any violation of
32 the conditions of release.

33 3. Advise the person that a warrant for his arrest may be issued
34 immediately on any violation of the conditions of release, including the
35 failure to submit to deoxyribonucleic acid testing ordered pursuant to
36 paragraph 4 of this subsection.

37 4. If the person is charged with a felony or misdemeanor offense
38 listed in section 13-610, subsection 0, paragraph 3 AND IS SUMMONED TO
39 APPEAR, order the person to report within five days to the law enforcement
40 agency that arrested the person or to the agency's designee and submit a
41 sufficient sample of buccal cells or other bodily substances for
42 deoxyribonucleic acid testing and extraction.

43 G. At any time after providing notice to the victim pursuant to
44 section 13-4406, the judicial officer who orders the release of a person on
45 any condition specified in this section or the court in which a prosecution

1 is pending may amend the order to employ additional or different conditions
2 of release, including either an increase or reduction in the amount of
3 bail. On application, the defendant shall be entitled to have the conditions
4 of release reviewed by the judicial officer who imposed them or by the court
5 in which the prosecution is pending. Reasonable notice of the application
6 shall be given to the county attorney and the victim.

7 H. Any information that is stated or offered in connection with any
8 order pursuant to this section need not conform to the rules pertaining to
9 admissibility of evidence in a court of law.

10 I. This section does not prevent the disposition of any case or class
11 of cases by forfeiture of bail or collateral security if such disposition is
12 authorized by the court.

13 J. A judicial officer who orders the release of a juvenile who has
14 been transferred to the criminal division of the superior court pursuant to
15 section 8-327 or who has been charged as an adult pursuant to section 13-501
16 shall notify the appropriate school district on the release of the juvenile
17 from custody.

18 K. For the purposes of this section and section 13-3968, "judicial
19 officer" means any person or court authorized pursuant to the constitution or
20 laws of this state to bail or otherwise release a person before trial or
21 sentencing or pending appeal.